

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE

TERRY CHRISTOPHER BOUNDS,

DEBTOR

**TERRY CHRISTOPHER BOUNDS &
DIANA BOUNDS**

PLAINTIFFS,

V.

**LYNN HAMILTON BUTLER &
BROWN MCCARROLL, L.L.P.,**

DEFENDANTS.

CASE NO. 09-12799-CAG
CHAPTER 7

ADVERSARY CASE NO. - -CAG

NOTICE OF REMOVAL

COME NOW Lynn Hamilton Butler (“Butler”) and Brown McCarroll, L.L.P. (“Brown McCarroll”), “Defendants” in the civil action styled and numbered *Bounds et al. v. Butler et al.*, Cause No. D-1-GN-10-004274, pending before the 126th Judicial District Court, Travis County, Texas (the “Civil Action”), and hereby remove all claims and causes of action asserted therein by Terry Christopher Bounds and Diana Bounds against Lynn Hamilton Butler and Brown McCarroll, L.L.P. (the “Removed Claims”) to the United States Bankruptcy Court for the Western District of Texas pursuant to 28 U.S.C. § 1452(a), FED. R. BANKR. P. 9027, Local Rule 9027 of the United States Bankruptcy Court for the Western District of Texas, and the Standing Order of Reference of Bankruptcy Cases and Proceedings *Nunc Pro Tunc* entered in the United States District Court for the Western District of Texas on August 13, 1984. In accordance with Rule 9027(a)(2), Defendants state as follows:

THE REMOVED CLAIMS

1. The Removed Claims are those asserted by Terry Christopher Bounds and Diana Bounds as Intervenor Plaintiffs against Butler and Brown McCarroll in the Civil Action. These include and are expressly limited to: (1) the Negligence and Breach of Fiduciary Duty claims asserted by Terry Christopher Bounds against Butler and Brown McCarroll in his Plea in Intervention in the Civil Action; and (2) the Negligence and Breach of Fiduciary Duty claims asserted by Diana Bounds in her Plea in Intervention in the Civil Action. The remainder of the claims in the Civil Action are not hereby removed and all other parties and claims expressly remain pending before the 126th Judicial District Court, Travis County, Texas in the Civil Action.

2. Butler and Brown McCarroll, L.L.P. were served with the Removed Claims asserted by Terry Christopher Bounds on September 28, 2011. Thereafter, Butler and Brown McCarroll were served by the Removed Claims asserted by Diana Bounds on October 27, 2011. Accordingly, this Notice of Removal is filed timely pursuant to Rule 9027(a)(2), FED. R. BANKR. P., and 28 U.S.C. § 1446(b).

SHORT AND PLAIN STATEMENT OF REMOVAL JURISDICTION

3. Because the Removed Claims arise in a case (or cases) under title 11 and involve claims regarding property of the Debtor(s) as of the commencement of such case(s), this Court has jurisdiction over the Removed Claims under the provisions of 28 U.S.C. § 1334(b) and (e). The Removed Claims may be removed to this Court pursuant to 28 U.S.C. § 1452(a). Alternatively, the Removed Claims are “related to” a case under title 11 and this Court has jurisdiction over the Removed Claims and removal is proper under the same provisions.

CORE PROCEEDING

4. Upon removal, the Removed Claims are core proceedings under 28 U.S.C. § 157(b)(2)(A), (B), and/or (O) as the Removed Claims arise in a bankruptcy case and concern administration of the estate, concern the allowance or disallowance of exemptions from property of the estate and/or affect the liquidation of claimed assets of the estate. Alternatively, the Removed Claims are non-core, "related to" proceedings, and Butler and Brown McCarroll consent to the entry of final orders and judgments by the bankruptcy court.

ATTACHMENTS

5. Pursuant to Bankruptcy Rule 9027 and Local Rule 9027, copies of the docket sheet, and pleadings, orders, and writs served upon the Defendants in this case are attached to this Notice of Removal as "Exhibit A." These documents include:

- a. Civil Action Docket Report;
- b. Plaintiff's Original Petition;
- c. Executed Service of Citation: Sean Edward Breen;
- d. Executed Service of Citation: Segal McCambridge Singer & Mahoney, Ltd.
- e. Executed Service of Citation: Timothy J. Herman
- f. Notice of Filing Rule 11 Agreement;
- g. Defendants Howry Breen & Herman, LLP and Sean E. Breen's Original Answer and Request for Disclosure;
- h. Defendant Segal McCambridge Singer & Mahoney, Ltd.'s Original Answer;
- i. Defendant Timothy J. Herman's Original Answer;
- j. Defendant Timothy J. Herman's Amended Original Answer;
- k. Plea in Intervention;

- l. Notice of Substitution of Counsel and Designation of Attorney-in-Charge for Defendant Timothy J. Herman;
- m. Objections, Motion to Quash Subpoena for Production of Documents and Motion for Protective Order;
- n. Objections, Motion to Quash Subpoena for Production of Documents and in the Alternative Motion for Protective Order;
- o. Defendant Herman's Motion to Quash;
- p. Plaintiff's Notice of Hearing;
- q. Objections, Motion to Quash Subpoena for Production of Documents and in the Alternative Motion for Protective Order;
- r. Executed Service of Subpoena: Owen Kinney;
- s. Intervenor's Notice of Hearing;
- t. Diana Bounds' Motion for Protection from Discovery and Discovery Subpoena;
- u. Independent Bank's Motion to Quash and for Protective Order Regarding Subpoenas for Records (Non-Parties);
- v. David Fernea and Kim Fernea's Objections, Motion to Quash Subpoena for Production of Documents and Motion for Protective Order;
- w. Notice of Hearing;
- x. Notice of Hearing;
- y. Owens T. Kinney's Objections, Motion to Quash Subpoena for Production of Documents and Motion for Protective Order;
- z. Defendant Timothy J. Herman's Original Answer to the Plea in Intervention;
- aa. Defendant Howry Breen and Herman LLP and Sean E. Breen's Original Answer to Plea in Intervention and Request for Disclosure;
- bb. Defendant Segal McCambridge Singer & Mahoney, Ltd's Answer to Intervenor's Plea in Intervention;
- cc. Executed Service of Subpoena: Affidavit of Service-Diana Bounds,

Custodian of Records for DLB, LLC;

- dd. Executed Service of Subpoena: Affidavit of Service-Diana Bounds, Custodian of Records for REC Industries;
- ee. Executed Service of Subpoena: Affidavit of Service-Diana Bounds;
- ff. Notice of Hearing;
- gg. Diana Bounds' Motion for Protection from Discovery and Discovery Subpoena;
- hh. Rule 11 Agreement;
- ii. Defendant Timothy J. Herman's Motion for Leave to Designate Responsible Third Party;
- jj. Defendant Timothy J. Herman's Motion for Leave to Designate Responsible Third Party;
- kk. Plaintiffs' Objections to Defendant's Motion for Leave to Designate Responsible Third Party;
- ll. Intervenor's Objections to Defendant's Motion for Leave to Designate Responsible Third Party;
- mm. Plaintiff's Response to Diana Bounds' Motion for Protective Order;
- nn. Executed Service of Subpoena: Diana Bounds;
- oo. Agreed Order;
- pp. Plaintiffs' Motion to Compel Defendants Herman and Segal McCambridge Singer & Mahoney;
- qq. Plaintiffs' Amended Motion to Compel Defendants Herman and Segal McCambridge Singer & Mahoney;
- rr. Vacation Letter from In-1's Attorney, Robert J. Myers;
- ss. Defendant Segal McCambridge Singer & Mahoney's Response to Plaintiffs' Amended Motion to Compel;
- tt. Order on Plaintiffs' Amended Motion to Compel Defendant Segal McCambridge Singer & Mahoney;

- uu. Rule 203.2 Certificate: Diana Bounds, Vol.. I;
- vv. Intervenor's Objections to Defendant Segal McCambridge Singer & Mahoney, Ltd.'s Request for a Privilege Log and Motion for Protective Order;
- ww. Plaintiffs' Objections to Defendant Segal McCambridge Singer & Mahoney, Ltd.'s Request for a Privilege Log and Motion for Protective Order;
- xx. Exhibits Receipt;
- yy. Defendants' Joint Motion for Leave to Designate Responsible Third Parties;
- zz. Defendant Segal McCambridge Singer & Mahoney, Ltd.'s Motion to Compel;
- aaa. Intervenor's Objections to Defendants' Joint Motion for Leave to Designate Responsible Third Parties;
- bbb. Plaintiffs' Objections to Defendants' Joint Motion for Leave to Designate Responsible Third Parties;
- ccc. Notice of Hearing;
- ddd. Notice of Hearing;
- eee. Defendants' Joint Motion to Strike Plaintiffs' Setting of Plaintiffs' Objections to Defendants' Joint Motion for Leave to Designate Responsible Third Parties;
- fff. Plea in Intervention of Terry Christopher Bounds;
- ggg. Motion to Quash Notice of Video Deposition to Intervenor-Plaintiff, Randolph N. Osherow, in his Capacity as Chapter 11 Bankruptcy Trustee of the Estate of Terry Christopher Bounds;
- hhh. Notice of Appearance and Designation of Lead Counsel for Defendants Howry, Breen & Herman, LLP and Sean E. Breen;
- iii. Plea in Intervention of Diana Bounds;
- jjj. Motion to Withdraw;
- kkk. Executed Service of Citation: Brown McCarroll, LLP;

- lll. Executed Service of Citation: Lynn H. Butler;
- mmm. Plaintiff's Motion in Support of Plaintiff's Motion for Protective Order;
- nnn. Defendants' Reply to Intervenor's Objections and Plaintiffs' Objections to Defendants' Joint Motion for Leave to Designate Responsible Third Parties;
- ooo. Defendant Segal McCambridge Singer & Mahoney, Ltd.'s Answer to Diana Bounds' Plea in Intervention;
- ppp. Defendant Segal McCambridge Singer & Mahoney, Ltd.'s Answer to Terry Christopher Bounds' Plea in Intervention;
- qqq. Defendant Timothy J. Herman's Answer to the Pleas in Intervention of Terry Christopher Bounds and Diana Bounds;
- rrr. Order on Motion to Withdraw;
- sss. Order on Defendants' Joint Motion for Leave to Designate Responsible Third Parties;
- ttt. Defendants Howry, Breen & Herman, LLP and Sean E. Breen's Original Answer to Pleas in Intervention of Terry Christopher Bounds and Diana Bounds;
- uuu. Order on Defendant Segal McCambridge Singer & Mahoney, Ltd.'s Motion to Compel;
- vvv. Original Answer and Request for Disclosure of Defendants Brown McCarroll, LLP and Lynn Hamilton Butler.

NOTICE TO STATE COURT

6. Pursuant to Bankruptcy Rule 9027(c), a copy of this Notice of Removal has been filed with the Clerk of the Travis County District Court.

WHEREFORE, Movant prays that the above described Removed Claims now pending in the 126th Judicial District Court, Travis County, Texas, bearing Cause No. D-1-GN-10-004274 be removed to this Court.

Dated this 28th day of October, 2011.

Respectfully submitted,

MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.
One American Center
600 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 495-6000
(512) 495-6093 Fax
ddodds@mcginnislaw.com
alucas@mcginnislaw.com

- and -

BROWN MCCARROLL, L.L.P.
111 Congress Avenue, Suite 1400
Austin, TX 78701
(512) 472-5456
(512) 226-7324 (fax)

By: /s/ April E. Lucas
Douglas D. Dodds
State Bar No. 05932020
April E. Lucas
State Bar No. 24046323

ATTORNEYS FOR LYNN HAMILTON BUTLER
& BROWN MCCARROLL L.L.P.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via regular mail, certified mail, return receipt requested, facsimile, and/or electronic mail on this the 28th day of October, 2011 to the following:

R. James George
Amy L. Saberian
George & Brothers, L.L.P.
114 W. 7th Street, Ste. 1100
Austin, Texas 78701
(512) 499-0094 Facsimile

Robert J. Myers
Robert J. Myers & Associates
6777 Camp Bowie Blvd., Ste. 215
Fort Worth, Texas 76116
(817) 877-9969 Facsimile

A. Boone Almanza
Almanza, Blackburn & Dickie, LLP
2301 S. Capital of Texas Hwy.
Building H
Austin, Texas 78746
(512) 478-7151 Facsimile

James Guleke
Sneed, Vine & Perry, P.C.
901 Congress Avenue
Austin, Texas 78701
(512) 476-1825 Facsimile

Scott King Field
The Field Law Firm, PLLC
5910 Courtyard Drive, Suite 255
Austin, Texas 78731
(866) 271-4431 Facsimile

/s/ April E. Lucas

April E. Lucas